

## **HOW CHILD PSYCHIATRIC TESTIMONY WORKS By Gilbert Kliman, MD**

VOICES FOR PSYCHOLOGICALLY INJURED CHILDREN:  
PSYCHOANALYTIC TESTIMONY DURING CIVIL LITIGATION  
HELPS BRING SOCIAL CHANGE, SETTLEMENTS AND JURY AWARDS

### **Abstract:**

The author draws on his experience in the field of psychoanalysis and forensic child psychiatry, in over 200 separate cases, most of them civil, many with multiple victims. About 70% were requested by child plaintiffs' attorneys, 30% by defense attorneys. Child psychoanalytic testimony, because of its depth and scope, can make major contributions to the civil justice system and can lead to just compensation for child plaintiffs. Attorneys can strategically use such testimony to favorably influence child institutional practices and standards of care. Psychoanalytic testimony, when requested by a skilled attorney and carefully integrated with that attorney's professional tasks and skills, can lead to more thorough and knowledgeable compensation for injured children than occurs with superficial approaches to psychological pathology, prognosis and care. Governmental and private institutions are then more likely to be required by courts and juries to pay appropriate rather than token compensation for negligence in allowing children to be traumatized in life-damaging ways. Despite important failures, the cumulative impact of psychoanalytic participation in forensic endeavor helps motivate social change. When major compensation is given traumatized children and the negligent or abusive parties are held financially responsible, child protection standards improve. To illustrate the measurable significance which the judicial system gives to psychoanalytically informed evaluations and testimony, plaintiff children's cases are discussed. Among those cases, the author's reports and testimony helped attorneys win awards and settlements for children totaling over a quarter billion dollars.

### **Introduction**

The legal system and juries customarily weigh evidence more regularly than the psychoanalytic profession. Attorneys, mediators, judges and juries measure personal injury damages in quantifiable ways, and the legal system compensates injured and disabled persons in the measurable form of money. As psychoanalysts we have powerful voices to contribute to the process, if we are careful in collaborating with excellent attorneys and use high standards in preparing evidence and organizing testimony. This essay is an effort to reflect on what has worked best so far in an ongoing career of thirty years in forensic child psychiatry. As a psychoanalytic child psychiatrist, with my staff's help, I often succeed in helping mediators, attorneys, judges and juries conclude that the evidence presented through my testimony concerning a child's injury was well founded. Many of the verdicts and settlements had socially significant impact leading to detectible favorable changes regarding children's safety in governmental, social and religious organizations and systems. A readily measurable outcome is that monetary awards for parties we whom we provided evaluations and testimony totaled over a \$260,000,000.

As an expert, I found that most of the major successful cases depended on good teamness between attorney and expert. There is probably a positive cycling effect at work among cases in which psychoanalysts are involved. Previously highly effective attorneys are the ones most likely to choose effective experts. Thus the chosen expert is also in the position of being well prepared with the help of the already experienced retaining attorney, and being provided with all the necessary documents and evidence, and given enough time and collaboration from the attorney himself or his or her office staff for the expert to prepare a thorough and convincing presentation. My impression is that time spent by the attorney and expert together has a positive correlation with outcome. The more the two work together the more they make a team in court. They must literally show mutual knowledge of each other's findings and evidence, and a good understanding of each other's roles. Juries may have no patience with a team of ill-prepared or uncoordinated attorneys and experts. Further, the expert whom the attorney has prepared adequately is less vulnerable at cross-examination.

Our child psychoanalytic consultation has resulted in most cases being considered won by the retaining side. Only five of over 200 cases have resulted in adverse decisions. Several of those adverse decisions were based not on the clinical merits of the case for damages but rather on liability matters concerning who was responsible.

## **Examples of Societal Impact**

Jury and settlement awards, if large enough to punish and cause attention, have a striking effect on future behavior, particularly of corporations, agencies, church administrations and governments. Some of our cases have involved very high intensity of press attention, particularly concerning priests who sexually molest and church administrations which fail to protect children. Thus, the examples which follow concern neglect of children in institutions, particularly what occurred at the OK Boys Ranch, Three Springs Residential Treatment Center, and the Roman Catholic Diocese of Dallas. Responses of juries in the civil cases were powerful punishments and incentives for institutional improvements. In other cases (below) my psychoanalytic testimony helped establish legal precedents in two states for using clinical and scientific evidence concerning the effects of loss of parental services.

### **Standards of Residential Care for Delinquent Adolescents: Does vs. OK Boys Ranch, The Kiwanis and the State of Washington.**

This Washington State case involved teen-age boys living in an institutional environment. I found evidence showing children's lives at the OK Boys Ranch resembled Golding's (1954) novel, *The Lord of the Flies*. The novel, like this institutional negligence case, centers on how children's impulse controls and superego processes deteriorate in the absence of adult supervision. At the OK Boys Ranch, delinquent boys as young as eleven and as old as seventeen were allowed to batter, as well as anally and orally rape each other. We used the facility's behavioral logs to give documentary evidence and obtained depositions showing the staff was aware of rapes, beatings and intimidations. They had mad clinical notes of numerous such events, and responded as counselors to the complaining victims. Staff told boys that the rapes were "normal adolescent behavior," thus permitting and ratifying the wrongdoings. Great harm resulted to many minors. At the OK Boys Ranch what little reporting of sexual assaults there was to protective services was poorly followed up. Further, the repeated complaints of State licensors and auditors concerning violations of supervisory standards at the Ranch had been ineffectual for over a decade. Thus not only the Ranch but also the State was sued.

The societal impact of the 52 OK Boys Ranch victims' cases in which I have been involved seems substantial. First, nothing else had closed the Ranch until the civil suits started to give promise of succeeding in a major and well-publicized way. Those suits depended heavily on my psychoanalytically informed testimony. I extensively interviewed each child concerning details of the assaults and psychological consequences, and videotaped the interviews. Earlier childhood histories (usually including many vulnerabilities due to prior traumatization and documented psychiatric disorders) were articulated in my written opinions and depositions. I carefully reviewed the facility's behavioral logs. Together with much of the assembled evidence assembled, the logs gave me a foundation for an opinion that the sexual assaults of the boys on each other were generally foreseeable, preventable, and harmful to the boys. In each child's case there had been a loss of much-needed residential therapeutic opportunity, linkage of therapeutic milieu with trauma, and accumulation of trauma through preventable victimization. Each child's personality development was harmed during the passage of several epochs. Because I am a child psychoanalyst factors involved in my testimony included extensive use of psychoanalytic literature, especially societal influences on personality formation, the superego and the ego ideal, and the opportunity for constructively reworking the Oedipus complex during adolescence (Bos 1979, Erikson, 1959). In one case a child who was allowed to be a frequent perpetrator was considered by his attorney, and by me, to be a victim of corrupt adult permission giving and turning a blind eye to his known assaultive behavior.

The litigation had several phases, spanned over seven years and involved 52 children. During the course of this widely publicized case, the State of Washington responded constructively by creating a more responsive and autonomous intermediary to protect the civil rights of children in state-licensed or state-conducted care. The Office of the Family and Children's Ombudsman is now required by state law to research child abuse in State controlled care. A booklet was created and distributed to all children over age 12 in state-licensed care, describing their rights and access to Ombudsman services. The OK Boys Ranch was finally closed, and several state officials chose or were required to leave employment. The children were compensated in every case, totaling over fifty million dollars. We thus believe there have been widespread favorable impacts on safety of children within Washington state institutions and

agencies caring for children.

A secondary important issue was the failure of therapists who knew of the complaints of rapes and were treating some of the children, to call protective services to report and prevent further rapes of their clients and other children. This issue, also, resulted in favorable major (but confidential) settlements for the child victims.

Videotaping my interviews with each boy gave me the opportunity to return during later phases of the litigation to what I had seen earlier. The interval was as long as six years for some children. I used the old tapes in new phases of the litigation, re-interviewing and compare my later findings with previously noted conditions of the same children. Using Axis V of DSM-IV (American Psychiatric Association), we were able to form serial GAF (Global Assessment of Function) scores showing that many of the children were continuing to deteriorate, as well as having chronic PTSD. We used Khan's (1963) concept of cumulative trauma and relevant adult psychiatric literature concerning how chronicity is commonly found among traumatized veterans many years after the initial diagnosis of PTSD.

This case had other features of scientific and legal interest. One was quite unexpected, in that we learned that an attorney behaved in a wrongful fashion, mirroring his institutional client in a certain deceptive way. This discovery came about partly because of my psychoanalytic emphasis on attention to detail. Aiming for thoroughness, I had staff perform collateral interviews when I could not do so with parents and foster parents, perform standardized psychological testing, review and make timelines of literally tens of thousands of pages of documents about the earlier childhoods of the children ? many of whom were the subject of much narrative recording within social service logs. This resulting paperwork preoccupied one defense attorney strangely. He literally spent days deposing me about clerical matters. I noted a persistent tendency on the part of this attorney to projectively attribute unwarranted blame onto me concerning whether my own rather systematic records were in good order. At my first opportunity during the deposition, I offered an opinion that something was troubling the deposing attorney. I thought it concerned not my documents but rather a great concern about the adequacy of the submission to me of his own institution's behavioral documents. This psychoanalytically derived clue helped the already alert plaintiff's attorney, who was ultimately able to prove that 20,000 pages of institutional behavioral daily log documents had been wrongfully withheld during discovery by that same defense attorney. In addition the deposing attorney also had an ethical conflict as he was a former member of the defending institution's Board of Directors. He ultimately was penalized \$160,000 as a disciplinary action by a court which reviewed the matter.

### **Standards of Therapeutic Residential Care for Disturbed Child and Adolescent Patients: Doe vs. Three Springs Outdoor Therapeutic Facility**

While writing this paper, I received a call from Mark Floyd, a Tennessee attorney for a rural child. He reported to me on a 2001 case in which I had testified, one concerning a child my staff and I had evaluated and about whom I testified concerning a rape. In John Doe vs. Three Spring's Residential Treatment Center of Duck Creek, TN, a verdict was entered in Federal court against the Residential Treatment Center in the amount of \$470,000 (Tennessee Trial Lawyer 2001). The jury was composed of small town middle-class Tennesseans. The twelve-year-old child, as tiny as an average nine year old, and with a commensurate bone age had been anally raped by a larger fourteen year-old child at the residential treatment center. I testified for most of a day, explaining my certainty that the event had occurred, how it had occurred, and the role of a sleeping counselor. It had occurred during a daytime hike, and was not consensual as the defense claimed. I articulated an opinion that it was foreseeable due to the known predilections of the aggressor. Further, it was predictably harmful and something to be strenuously avoided. The acts and concomitant surrounding events in a treatment facility, including the way it was dealt with, were probably harmful in scientifically known ways. Adverse effects were described as I found them in the here and now, and extrapolated to the future personality development and sexual life of the victim. The expert for the defense had no psychoanalytic training. He conducted a brief examination, testified that the event had not occurred, that if it did occur it was consensual, and that it was well dealt with by the institution, and that it was not harmful. He was ignored by the jury, an exit poll showed. No witness denied the counselor had fallen asleep on the hike, or denied the known and foreseeably continuing assaultiveness of the alleged perpetrator or the small size of the alleged victim.

Why was it that this small town Tennessee jury disregarded the opinions of the defense expert and believed the plaintiff's expert that a rape had occurred? I believe it was largely because of my use of my child psychoanalytic training. That training led me interview the child thoroughly and tactfully, helped me to obtain circumstantial data, and to record and listen carefully to contextual embedding of the history. The child created a vivid picture for me of the surroundings in which the rape occurred, and events with the perpetrator in the shower room which had preceded the day of the rape. I was ultimately able to regard the entire childhood, especially the traumatic infancy and developmentally disturbed early years of the plaintiff as causative of special vulnerability and special need for protection. By giving many real and human details to the jury I demonstrated my command of the details of both the traumatic assault and relevant developmental facts. The defense might have assumed I wished to conceal developmental facts which showed much pre-existing trauma and major pre-existing disorder. But like a knowledgeable psychoanalyst who understands vulnerability, the jury regarded these pre-existing developmental adversities with interest and as showing a special need of the institution to protect a child. Instead of being dismayed by the amount of damage life had already brought to the child, the jury understood the concepts of cumulative trauma and aggravation of pre-existing disorder. Further they understood the special duty of a therapeutic facility to protect its children from traumatizing or even overstimulating each other, especially where one of the children was documented as an intimidating predator and the plaintiff documented as a small and sexually undeveloped child whom the institution previously noted was at risk of allowing himself to be and feel victimized.

Rather than regarding my testimony as pedantic, theoretic abstractions, or as reasons why the facility had not caused the harm, the jury was all the more convinced of the child's need for protection. They award the plaintiff child an amount of compensation which was over four times the best pre-trial settlement offer the defense had made.

This was gratifying for many reasons. I took it as a professional achievement, as the attorney said the jury award was a product of my testimony being so detailed and its psychoanalytic hypotheses so credible that it was accepted in the face of utter contradiction by the defense. When the defense used testimony about the child victim himself feeling at fault, I was able to show the jury such self-blaming was part of the victim's psychology, at times believing that somehow he had himself failed to be self-protective enough, and had thus believed he had been the cause of the rape.

I predict that this jury verdict, together with the settlements in 52 OK Boys Ranch cases, will be cumulatively helpful to other children in other institutions, resulting in children being better protected from peer assaults. Corporations running residential treatment facilities will regard sexual intercourse amongst their child patients as too costly to be permitted, whether or not pregnancies or sexually transmitted diseases resulted. The psychological consequences of the victimization of children by each other are now of increasingly significant concern for the administrators of treatment centers. Probably as a result of earlier successes, there has been a resulting flow of recent institutional negligence settlements in cases where I have testified. This has occurred in California most especially in cases against the Victor Chaparral Treatment Centers<sup>4</sup>. The settlement outcomes appear to have been influenced by the Washington and Tennessee successes which preceded and of which the opposing counsel was made aware.

### **Loss of Parental Services: a Child's Need for the Auxiliary Ego Functions of a Parent**

Because of a catastrophic fire in a New York City restaurant, three children lost both their parents. The jury was readily educated by the bereaved children's attorney (Conason 1984). As a team, he and I demonstrated that loss of services through death of a parent had been scientifically shown to have causal connection with increased psychopathology during adolescence and adult life. We connected the scientific literature with the particular bereaved children. Discussion of grief and mourning had to be avoided and those experiences of the bereaved children were not compensable by court instruction. But testimony was permitted regarding the developmental consequences of loss of auxiliary ego functions (Kohut, 1966), and the auxiliary developmental services provided by parents (Kliman 1980). Attachment and development under the influence of or without a familiar parent (Bowlby 1969) became a focus of evidence. The small-scale prospective work of the author with 18 untreated orphans (Kliman 1968) and the large-scale prospective study of 10,000 Minnesota school children by Ian Gregory (1965) was a strong part of the scientific background evidence offered for increased psychopathology caused by loss of

parental services. A six million dollar jury verdict resulted.

This psychoanalytically informed testimony for bereaved children established a precedent, which held thereafter for psychiatric testimony as acceptable evidence in New York for determining damages caused by the loss of parental services. A similar event occurred years later in California when the author testified at the request of plaintiff's attorney David Groekenberger, in *Gilman vs. City of Long Beach, CA*, establishing psychiatric testimony as acceptable evidence in that state for determining damages caused by the loss of parental services. In a later California case, *Jenkins vs. Acme Tractor*, attorney Arthur Morgan showed that a rural jury also appreciated the lasting effects of early parental death and loss of parental services. In that case, and the *Gilman* case, videotaped interview evidence was effectively used to show the jury demonstrative findings on which my psychoanalytic and psychiatric opinions were based. Several Ohio cases with Jay Harris, III (Case Notes and OAJ Proceedings), and a Federal case then ensued in which I testified as a psychoanalyst and child psychiatric expert knowledgeable concerning children's detrimental reactions to loss of a parent. Seventeen bereaved Alaskan Inuit Native Americans living near Nome then benefited from similar videotaped evaluations and opinions about lost services following an airline crash. In many of the cases, the credibility of detail concerning services the dead person used to provide was established by showing the jury pre-bereavement family videotapes and my interviews of the bereaved spouses and children describing intimate and developmentally valuable transactions. It became clear to the juries that valuable services were involved which were now forever lost and unlikely to be well replaced.

### **Serving Public Health Through Psychoanalytically Led Nonprofit Forensic as Well as Therapeutic Child Psychiatry**

As I increasingly recognized the public health significance of the forum courts provide for child psychiatry and child psychoanalysis, a forensic service was created as part of a nonprofit children's mental health agency. The function of expert evaluation and testimony concerning children's issues has been carried out by the agency to some extent since 1997. The agency's articles of incorporation reflect the mission of protecting children from abuse and testifying about children's safety and abuse issues as a specific major goal for the agency. What began as the author's forensic activities in a solo practice of child psychoanalysis are now increasingly carried out by teams at the Children's Psychological Health Center. The Center employs the author as full time Medical Director. The tax exempt (501 C-3) agency was and continues to also conduct a busy children's mental health treatment service, with short-term as well as long-term and very intensive treatment provided. We focus our treatment energies on an in-classroom therapeutic school service and research concerning a child psychoanalytic method called The Cornerstone Method or The Cornerstone Method of Reflective Network Therapy. It is an intensive means of providing individual and family therapy services to very disturbed children ages two through seven. (Kliman, 1975, Lopez and Kliman 1980, Diaz Hope 1999). We find the emphasis on regularly and personally providing psychoanalytic treatment is an important one, sharpening us professionally not only for the necessarily few children we treat, but for the larger number of other children about whom we testify.

A unique feature of the young children's treatments at our agency is that they all occur in their real life space, their special education classroom. One group of patients is served by a psychoanalytic model delivered in a new public health fashion. They are all treated at no cost to their families, within a public special education classroom, where our agency provides psychoanalytic supervision to the teachers and in-classroom therapist. We probably could not perform these therapeutic nursery activities without the income produced by forensic services. Conversely, we could not perform forensic services without the experience and knowledge the treatment services give us.

The interest of the agency in treating traumatized and disturbed children, informed by forensic activities in turn, has led to another public health service. We have produced a series of psychoanalytically inspired guided activity workbooks for traumatized children (Kliman 1989, 1999). A new one was produced after the September 11, 2001 attack on America (Kliman 2001). Seven thousand copies of that workbook have recently been in use by children throughout the shocked nation. We are preparing similar workbooks for Israeli and Palestinian children.

Our forensic child psychiatry service is increasingly busy. Nowadays, it occupies about 40% of the

author's full time. Of that 40% portion in forensics, about seventy percent of his (and staff's) forensic time is spent preparing evaluations of child plaintiffs in civil matters, thirty percent at the request of defense attorneys. The locations as well as tasks are variegated. Three years ago we went to the Arctic Circle region near Nome, Alaska, to evaluate 17 plaintiff family members who had been bereaved by an airline crash. Recently we were asked by a residential facility to perform a behavioral practices audit on its children, and evaluated 115 children in rural Missouri. At this writing, about 200 children have been in evaluation or treatment at the Center in 2001, the treatment as well as evaluations being mainly in our school projects.

### **Interdisciplinary Functioning under Psychoanalytic Leadership**

Usually, about ten full-time persons are employed at our agency, with only two full-time in administration. Often five or six of us work simultaneously on a forensic project. Our headquarters and forensic services are in the same building as our therapeutic preschool, so two or three of us may work in the school treatment project as well as on forensic tasks. Though we are psychoanalytically led, technology is important. We all operate in a sophisticated computer work environment, using scanners to record, view, transport and study extensive documents. Often we are linked by a network as a word-processing group with easy access to read each other's files. All initial psychiatric or other initial clinical discipline's evaluations are videotaped and closely examined by the team. Sections of the videotapes on which we rely for demonstrative medical evidence are sometimes used advantageously with juries to show them the nature of the evidence we can literally see concerning psychological damages. We have video-editing equipment for inserting titles and making excerpts for courtroom exhibits. I believe the major financial outcomes of some cases have turned on careful education of the jury through this demonstrative videotape procedure. (See footnote for other relevant cases using our interview videotapes to demonstrate medical evidence).

We estimate that among all of our plaintiffs' cases, we have by now given voice to the injuries of over 400 children in somewhat over 200 separate cases with awards and settlements total about \$260,000,000. But those dozen or so in which we educated the jury or defense attorneys counsel by way of videotaped interviews have been above average in size of awards and settlements. In the past decade, the average child plaintiff regarding whom demonstrative evidence included video interviews shown and discussed with the jury has received compensation of a million dollars. This indicates that attorneys, defendants, insurers, institutions, juries and ultimately society comprehend the information and take very seriously the recorded interview evidence available through careful examination conducted with psychoanalytic thoughtfulness. Seeing and hearing for themselves the nature of some of the important evidence helps the participants.

### **DEFENSE TASKS**

The same meticulous psychoanalytically informed detail in studying and demonstrating can be very effective on behalf of defense matters. I testified in a Michigan Superior Court (*Newkirk vs. East Lansing Public Schools, et al, 1994*) concerning a hotly contested complaint that the alleged use of "guided imagery" in "counseling" sessions was being used for malicious purposes. The plaintiff's allegations included that the school personnel were making preparations for the arrival of Satan, and the complaints ultimately extended to a supposed molestation by the counselor. It turned out that analytically informed interviews of the complainant's parents and child established that the day of the alleged molestation was the anniversary of the coming of another event. It had been a terribly traumatic tragedy in the child's family life, when two grandparents had been simultaneously and suddenly taken away by death and illness. There was only one chance in 365 that the timing of the allegedly harmful behavior was a coincidence. Litigated all the way to the U.S. Supreme Court (1995) the defense was successful. Bolstered by the interview data and psychoanalytic opinions about scientific parsimony and relative probability of one hypothesis over, it prevailed.

### **Psychoanalytically Informed Intellectual Products of Forensic Service**

Our staff's research interests have already resulted in two of three of their completed doctoral theses being produced about our forensic cases (*Wayrynen 1995, Scovis-Weston 2000*) and more seem to be percolating. The first observation was noting the remarkably high degree of oppositionalism among Child

Behavior Check List Data as well as in our clinical observations of molested children seen for evaluation. (Wayrynen E 1995). In that work an oppositionalism scale was created by several outside psychiatrists at our request and tested on our population. Then a hypothesis was proven that our sexually molested children differed markedly from other patients and children in general regarding their high degree of oppositionalism on that scale.

The next product was the appreciation that traumatic experiences induce pre-traumatic memory impoverishment. These changes include impoverishment of benevolent earlier memories and a late onset of earliest recalled memory. (Scovis-Weston 2001). Stimulated by observations of videotapes of catastrophically traumatized children under age 10, the author developed a unifying new theory of posttraumatic stress disorder (Kliman 1999). Forensic videotapes of child victims who experienced homicidal or life-threatening events show iconic communications. The children seem to be making themselves into "living signs" or signifiers of what the life-threatening danger was. For example a preschool girl was pulled by the hair and dragged a distance by a rapist, then held with her head down in a toilet while being assaulted. Evaluated and videotaped two years later she is seen to grabbing her own hair. She visibly pulls on it to such an extent that it comes out in clumps. (McMahon vs. Tacoma Community College). This tape was influential not only with a jury but in our own thinking about the turning of trauma into communication.

As psychoanalysts we take into account contributions from other fields. The new theory takes into account psychoanalytic, cognitive, psychophysiologic and Magnetic Resonance Imaging information concerning memory and brain changes, such as hippocampal atrophy (Bremner 1997). The conclusion is that iconic behavioral enactments of PTSD have a biological push. They originally had and still have some communicative value to the survivors, their neighbors and gene pool. The enactments should be approached as what were originally pantomimes. Before our species had language, these enactments were valuable adaptations, communications which warned other human beings of dangers. The adaptations are evolutionarily out of date, in need of revision into verbal narrative and sublimated form, more appropriate to our modern species' language oriented life than to the pre-linguistic times in which the adaptations first evolved.

### **Psychoanalysis and Scientific Standards**

Increasingly courts are demanding that a threshold of scientific credibility be passed before an expert may testify, especially in federal courts (Daubert 1993, Frey 1923). The highest standard is called "The Daubert Standard". While such standards are not yet applied in all State courts, I find it desirable to be ready to meet the Daubert standards in preparing my testimony for any court. For the lesser standard called "Frey", one must usually show that the expert is using generally accepted procedures and thresholds of his profession in giving his opinion. The higher Daubert standards require that hypotheses be used which can be tested and that the science used is replicable. For higher standard purposes, Jones' and Fonagy's (1999) and Target's and Fonagy's (1994) reviews and systematic scientific works, containing many non-psychoanalytic indices of change with various forms of psychotherapy, are highly useful to the child psychoanalytic expert. Zelman's (1997) studies of I.Q. improvements as related to treatment quantity are also useful. Mainly the studies show value of long-term psychotherapy. Organized research on outcomes of psychotherapy gives an absolutely necessary basis for courtroom testimony about the value of psychoanalysis versus less intensive treatments.

The developmental point of view is highly appreciated by juries, who generally like to understand how traumas of many types affects personality formation very differently at different points in a child's life. The law requires that any developmental or experiential vulnerabilities present not be used to excuse the need for care and protection of a child. An event which might not be traumatic for a more mature person or for another less vulnerable child may cause the immature or vulnerable child to succumb to a psychological illness. Nor is a highly competent child as likely as a less competent child to succumb to predation and betrayal.

As in testimony by experts about physical injuries and medical planning for the remaining life of an injured patient, a psychoanalyst can and should take a long-term point of view. In physical and mental health, this is called "life care planning". When the psychoanalytic expert is asked for recommendations, he or she is able to consider what would make the victim as whole as possible, restoring the child to a condition as

good as that in which the child functioned prior to the trauma. In addition, the life care plan gives consideration to the psychological needs of the child at each and every future developmental epoch and stage of life. A sexually traumatized child will often have consequences of trauma which require different psychological management at different future stages of life. Phases of adolescence, early adulthood, marriage, parenthood, and late adulthood all have tasks and developmental crises which may require further therapy for a sexually traumatized former child. In addition, parent guidance, group therapy, and sexual therapy may be required beyond individual psychoanalytically informed psychotherapies. When a psychoanalyst who is highly experienced in long-term treatment thinks through the phasic problems and treatment requirement likelihoods, which are caused by a complex trauma, he or she is more able than other professionals to see the enormity of the tasks which face many patients. That means the number of treatment methods, the treatment durations, and associated costs explained to juries all tend to be greater than with less broadly trained therapists who are experts.

The psychoanalyst testifying should be prepared to carefully explain the nature of the psychological injury and resulting disorder and disability. He or she must appropriately state the scientific merits of long-term care vs. short-term care for a seriously disabling chronic disorder. He or she should consider quantitative aspects such as frequency, duration and total quantity of psychotherapy sessions or other treatment –such as hospitalizations– as factors in quality of therapeutic outcome.

### **Pedophilia and Institutional Neglect**

Priest molestation of children is of widespread concern nowadays, and we have had twenty such cases. The problem is an old one, and children have been sexual toys of adults for millennia (Aries, 1962). Some important cases (none in which we have testified for the plaintiff child) have turned out to be based on children's false allegations. But few situations are more repugnant to morality and law than those in which society invests an adult with special powers and the adult then uses that power to gratify his sexual desires. In *Does vs. Fr. Rudy Kos and Archdiocese of Dallas*, the author and his team evaluated and testified concerning the behavioral problems of eleven Roman Catholic altar boys whom father Rudy Kos had molested during the course of his priesthood. He admitted these eleven were only a fraction of those he had actually molested.

The attorney for the children, Windle Turley, obtained a record-making verdict for his clients including an award of punitive damages totaling \$119,000,000. He had encouraged his clients to allow me to videotape my interviews, even though the tapes could become public information. He brought in collateral informants. I encouraged one to become a plaintiff because he was so evidently another victim of Father Kos. Consistent with my most successful communications to juries, close to the trial time, Turley and I literally spent days together, mutually preparing our approach to my testimony. He made sure I had what I needed in the way of tens of thousands of pages of "smoking gun" corroborating documents showing the warning signs, red flags and foreseeability of Kos' predations on numerous children staying overnight with him within the rectory of the children's church.

We waited until Mr. Turley presented most of the facts to the jury, so they were already convinced of the outrageousness of the Church's neglect of Father Kos' decades of predation in several parishes, Turley then put me on the stand for two days of direct testimony and one day of cross-examination. In a carefully prepared sequence, we chose the youngest of the victims (still a minor) to present his videotaped examination. It showed that the modus operandi of the perpetrator had not changed a bit since the onset with the now much older victims. It involved foot fetishism, followed by oral sex. Further, it showed how badly damaged this very young and clearly naïve boy was, and how he was blaming himself.

Later we showed a now much older victim, to show the long-term consequences of what had more recently happened to the youngest victim. This older victim's credibility was enhanced by the account of the so recently molested boy. His independently gathered and videotaped description of what I called a form of "soul murder" (Shengold 1989) was then more easily understood by the jury. The two boys portrayed a modus operandi of long seduction, and corruption by alcohol and drugs, leading to the victim waking up to find himself being sodomized in a rather helpless physical and mental condition. We traced the older plaintiff's highly traumatized and dissociated state to that and similar events, and showed the beginnings of a chronic posttraumatic and dissociative disorder in the younger child. Worse still, my



psychological autopsy of one of the plaintiffs showed that his pre-death mental content in a psychiatric hospital and his ultimate suicide was related to the perpetrator's molestation.

During the course of discovery and my analysis of the case, Father Kos' treatment records at a center for pedophilic priests were successfully subpoenaed. They gave much confirmation to individual and collective evidence of how he went about his abuses, and his sense that because the children were asleep or drugged that they were not being harmed. The videotaped testimony of the victim who awoke being raped was thus well understood by the jury.

It took courage for the victimized boys to appear in public. Mr. Turley assigned an associate (Merritt) to become the confidante of the boys. After they had given independent testimony, they supported each other during the trial. As my experience has been in other cases, giving courtroom testimony seemed to empower the victims, contrary to fears raised mainly by defense attorneys that the plaintiff attorney was putting the boys through a traumatic experience by having them testify.

In a remarkable response to details of a psychoanalytically informed reconstruction the jury gave the largest award in the Kos case to the estate of a deceased, suicided boy. The twenty-year-old victim had known the priest for 11 years, was a constant companion and frequent overnight guest. When hospitalized for suicidality the boy had been preoccupied with "foot art" closely related to the priest's foot fetish. He also violently tore a pair of sneakers, and spoke in treatment of his gender identity distress and confusion. The jury accepted my opinion that the compulsive pedophile, Rudy Kos, could hardly have refrained from carrying out his customary activities with such unbridled opportunity as provided by his negligent church administration.

### **Psychoanalyst in Court Appointed Status**

It is not unusual for a court to appoint a psychiatrist to testify in cases involving public wards or in custody issues. In the case of Pratt vs. Pratt, in Greenville, MS, attorney Arnold Gwinn asked and received permission for court appointment of the author. The resulting testimony led to dropping of charges of satanic sexual molestation of two boys. It also led to the release of the two and four year old children from a psychiatric hospital. There they were needlessly confined. A therapist who claimed to be a specialist in satanic practices literally forced the boys to give testimony against the father. She videotaped herself telling the children they could not leave the hospital if they did not supply information about bad things their Dad had done.

### **A Children's Civil Rights Matter: Mass Removal of 115 Unprepared Children from a Treatment Facility**

This case required objectivity of a kind psychoanalyst's often apply in practice, where they personally are not in moral agreement with the behavior of a client. Requested by the client -- a school -- The Children's Psychological Health Center engaged in an audit of Heartland Christian Academy's residential therapeutic program in Newark, MO. It started for the purpose of giving the school a forensic view about criticism of how it was managing its very disturbed population. Many of the children referred for homicidal and suicidal behaviors. In keeping with Missouri law which allows spanking, but very much against our moral principles, the children were being spanked as part of their discipline. They were also required to perform much manual labor on a farm, to which we did not object. They were all required to believe in Christ, a belief which few of our staff shared. Yet our staff and I maintained a benevolent and open-minded countertransference attitude toward the far-right Christian, corporally punitive institution, and it allowed us to know its workings intimately, as does a patient who feels hovered over in a caring and reflective way. Later we came to have a more rescuing role.

Beginning May 1st, 2002, we spent nearly a thousand hours evaluating 100 children. Two child psychiatrists, a nurse, and two other clinicians traveled from our Center to interview the children, parents and staff, and even sometimes to live in a dormitory. The Academy's general counsel, David Melton, and the Academy's administration were initially most concerned about public criticism of the program's use of farm work as well as paddling for disciplining its troubled youth. They wished to know whether our independent behavioral audit would find there were good or bad effects of their therapeutic and disciplinary practices, and what else we could recommend. During the first six months of the audit, the

local Sheriff and juvenile authorities did not respond to our written invitations to contact our San Francisco agency for information about alleged abuse. We thought we could contribute data related to their ultimately official concerns and allegations that discipline was excessively harsh, criminally cruel and inhuman. Unlike our agency, which had a favorable view of the clinical conditions of the children, juvenile authorities became increasingly alarmed that Heartland Christian Academy was such a clear and present danger to children that all must be removed in an emergency fashion. Therefore, uniformed officers and juvenile authorities suddenly descended upon the school October 30, 2001. They used armed policemen, State police vehicles and two large school buses. Police dogs were on hand.

Within a short time they removed all 115 residential students. Many of the children were very fearful. Many were screaming in protest, struggling to remain at the school, weeping, and agitated. Videos were taken by recent Heartland Academy graduates, young adults who were on the scene and covered the events for a local TV station. The video record showed vividly how shocked the children were. Some of the children can be heard screaming protests, defending the school as "a good place," and "not abusing us". Some children requested to know if their parents had agreed to their leaving. Some fought against being loaded onto buses, and continued crying anguishedly when on the buses. One girl had to be handcuffed, the police thought. Police dogs were audible barking nearby. It is hard to watch the scenes. Our team personally knows and cares about the children, having referred many for therapy to a local psychiatrist, and having become an influence on their lives through changes made resulting from the audit's early findings and recommendations.

Then the frightening mass removal occurred without warning to parents, staff, or treating personnel including a Missouri psychiatrist who had over 20 patients among those removed. We had already disapproved of corporal punishment, but not of farm work. The farm work had already been stopped by the school as a community relations decision before the audit began. The changes we got the school to institute included appointment of an Ombudsman. We recommended a cessation of all corporal punishment but only obtained a reduction in paddling from 10 swats maximum to five. Under this recommended plan, the Ombudsman was informed of any paddling and examined the child 72 hours later for signs of any bruising that might indicate excessive force. Further, the children could communicate complaints to the ombudsman by writing or in person about any matter of punishment or discipline that they felt was wrong.

After the children's mass removal, the Academy then requested our opinion in a federal action and then individuals asked our help in a federal civil rights action on behalf of parents and children who felt they had been harmed. We were asked to respond as to 1) whether there was any justification we found for such a mass emergency protection of the entire student body and 2) whether the manner of removal was harmful to any of the children. Our answers were "No" to the first and "Yes" to the second. Justice E. Richard Webber, United States District Judge for the Eastern District of Missouri, Northern Division, entered an Order at Heartland's request. The order prevents the mass removal of children from happening again unless there is proof of impending harm to all children. The judge indicated that my testimony about the Children's Psychological Trauma Center's audit was helpful. I offered data including Global Assessment of Function Scores, showing good work being done by Heartland Academy. I gave information from post-removal interviews with several children. The judge pointed out that my testimony was not challenged or contradicted by any other testimony. He issued an injunction supporting immediate return of the children, using our affidavit of findings and in-court testimony that the Academy was rendering a high quality of service to unusually ill and conduct-disordered children.

The experiences with children in residential care we have had at Children's Garden, San Rafael, at McKenna Children's Shelter, in San Mateo, in foster care homes of many kinds, and at the Montana Academy in Kalispell all led us to perceive Heartland's dedication and the resulting good effects on their patients. This opinion about global effects was a separate matter from our disagreement and disapproval of corporal punishment. Since spankings are legal in Missouri schools, we respected the school's views on the religious importance of spankings. They continue to believe that "to spare the rod is to spoil the child." (Old Testament, Solomon, Proverbs 13:24). We influenced the amount of paddling they did, which had previously been substantial.

Paddling is not against the law in Missouri families and schools, but is against regulations of foster care agencies. Though residential and often long-term in its care of children, the Heartland Christian Academy is not a foster care agency. Heartland, which believes in Biblical statements about the importance of

corporal punishment for children, claims that as a religious facility it does not have a need to comply with certain Social Service Regulations. It does not seek or accept licensure funding from the State or County. States and counties which have placed the very difficult children we examined at Heartland. Most of the placed children had failed to benefit from previous efforts at treatment with psychotropic medications and/or psychiatric hospitalizations. We have psychoanalytic hypotheses about why psychotic, suicidal, depressed, and otherwise disturbed and conduct-disordered children are benefiting from the experiences of attachment and mutual love they experience with and from their dedicated caregivers. We find there is continuous and unwavering conviction of the community itself that God and Jesus are the reasons for the improvements we have been documenting among 97% of the children. We were not sought out for our psychoanalytic views, but our interest in attachment and love as part of long-term residential care is being heard not only in court but also by the caregivers. They find that emphasis on sublimated love of children is easy for to understand as a spiritual principle, and we think it accounts for much of their good clinical results.

Among the many very deeply ill children who have been treated at Heartland, I testified concerning one autistic nine-year-old who showed distinct deterioration after simply witnessing his comrades removed on October 31st. He developed an urge to "bite flesh," a behavior he had overcome since arriving at Heartland a year earlier. My testimony described still another separation sensitive child, an eastern European orphan who upon being removed herself developed a distressing sense that her valued placement would be terminated forever. She would have to move still another time. She began to rock and to hear screams in her mind. Still another child, a thirteen year-old girl, was handcuffed and given immediate psychiatric hospitalization when protective authorities removed her. She was taken away over her screams and objections with the mass of 114 other children. As the judge witnessed videos of the removals, he clearly stated, he perceived evidence of great pain in the children.

### **Psychoanalytically Informed Technical Contributions - The Clinical Timeline**

Creating a detailed life chart is an influential and time honored tradition, pioneered by Adolph Meyer of Johns Hopkins (Meyer 1957). In almost every forensic case at our own Center, a team of clinicians creates a Meyerian Chart, which is a three columned table. Usually it is a five to fifty page chronology of a child's biological, developmental, social, family, social-service, legal, academic, occupational, symptomatic and therapeutic information. Dates and the child's age at the time are given on the left, events and psychological data in the middle column, and comments on the right. Sources are given for each item, usually referring to documents with page numbers stamped on them by a consecutive numbering machine. The sources of data are often masses of documents received from other sources, or are from identified pages from our own Center's clinical records. The electronically stored time-line of clinical data gives an organization suitable for inserting new data as it comes in, and guides the clinician as well as the attorney in considering clinical changes as related to data about developmental and external events. The high degree of identified sourcing of the data, makes testimony easier under the stress of a trial or deposition. Electronic searching by keywords is readily conducted, using widely available text searching software such as Microsoft Word and Corel WordPerfect. The document often becomes an exhibit for the education of the jury, and keeps our thinking accurately aligned with historical dates. Using such a guide, a psychoanalytic approach is unusually meticulous in giving rather than concealing details about prior traumas, thus showing the vulnerability of a child to new traumas. In several high monetary award cases (including OK Boys Ranch and Does vs. Fr. Rudy Kos and the Archdiocese of Dallas) attorneys believed the psychoanalytically derived charts were invaluable.

### **LIFE CARE PLANNING**

Since the time of Erik Erikson, psychoanalysts have been in the forefront of appreciating that there are meaningful distinctions among phases of life, beyond the distinctions between childhood, adolescence and adulthood. Thus a psychoanalytic life care plan may recommend treatment at several phases of life, following a trauma or following an aggravation of a pre-existing disorder. What follows is an actual example of a life care plan, used in court, concerning the increased treatment needs of a child who suffered a complex sexual trauma during treatment. His already poor condition was increased by developing a posttraumatic stress disorder, as well as by aggravation of a pre-existing disorder.

The life care plan referred to is from the actual case of Doe vs. Victor Chapparral (4). It focused on an institutionalized eleven-year-old boy who was neglected at his therapeutic residential institution. There he

was seduced and anally raped by a male counselor over a period of a half year. The table showed psychoanalytic thinking and associated opinion about treatment and treatment cost needs. It educated the jury in summary form about my opinion that a great deal of treatment was already needed for the boy without the trauma. I showed that a great deal more treatment than ever needed before would now be needed. The increased need was distributed over his lifetime. The cause for this increased need was the betrayal, loss of trust, sexualization of therapy, and many other decompensating effects of sexual violation on this already very vulnerable patient. With a skillful attorney (Jack Anthony of Santa Anna) relentlessly showing the institution had been negligent in previous years, the outraged jury awarded \$3.2 million dollars to the raped child whose suffering I explained.

#### ANONYMIZED LIFE CARE TABLE FROM DOE VS. VICTOR CHAPPARAL RESIDENTIAL TREATMENT CENTER.

(The name of John Doe is deliberately misstated)

#### SUMMARY OF LIFE TREATMENT RECOMMENDATIONS:

Modality Probable Treatment Needs If Not for Molestation and Negligence Additional Lifetime Treatment Need Resulting from the Molestation and Negligence; Additional Lifetime Cost for Psychiatrically Necessary Care and Rehabilitation

Full Inpatient Psychiatric Hospitalization during Ages 14 - 18 Half year @ 70,000/yr One year 70,000

Special education during adolescence Outpatient, in a public school. Two years in a private, highly skilled, therapeutic, residential school, after hospitalization during adolescence. A suitable therapeutic residential facility and school would be Montana Academy, near Kalispell, MT, which is run by a psychiatrist and clinical staff. 140,000

Hospitalization during Course of Adult Life Two years @ \$70,000 Two years. The Menninger Foundation in Topeka, KS would be a suitable facility. 140,000

Half Way House following Adult Psychiatric Hospitalization Six months @ \$2,000/mo Six months 12,000

Family therapy, lifetime 200 sessions @ \$100 200 sessions 20,000

Sexual counseling, lifetime 10 sessions @ \$125 200 sessions 24,750

Individual psychotherapy Phase III, through the rest of adult life 100 sessions @ \$125 50 sessions 6,250

Psychiatric consultation regarding psychotropic medications, Lifetime 50 sessions @ \$125 50 sessions 6,250

Medications, Lifetime Various anxiolytic and antidepressive medications, as well as impulse-inhibiting

Additional anxiolytic, antidepressive, and impulse-inhibiting, as well as anti-PTSD medication 25,000

Case management services to coordinate the various therapies, lifetime 1,000 hours @ \$25/hr 2,000 hours 50,000

TOTAL ADDITIONAL LIFETIME TREATMENT NEEDED AS A RESULT OF TRAUMA AND NEGLIGENCE DURING PATIENT'S TREATMENT AT VICTOR CHAPARRAL RESIDENTIAL THERAPEUTIC CENTER. \$494,250

Economic calculations are based on 2000 fees and medical costs in San Francisco, CA. Economic costs of the patient's damages in respects other than psychiatric care are not within the expertise of this examiner.

#### Prognosis

The child's prognosis is guarded. Even if the recommended treatment is applied, as he enters adolescence, I expect an escalation of the symptoms discussed in this report. Given the magnitude of the betrayal by caregiving professionals, Jimmy's willingness to participate, and capacity to utilize treatment remains in question. He remains at significant risk to both self and others.

## **CONCLUSIONS**

Psychoanalytic training enhances the practice of forensic child psychiatry, especially when that training includes child and adolescent as well as adult psychoanalysis. Such a training allows the expert to explain developmental distortions and probable future personality changes, as well as past and probable future pain and suffering induced by trauma. Psychoanalytic training is an important knowledge and skill base for working in the civil litigation courtroom. A psychoanalyst can educate a jury to understand that a serious trauma affects a sequence of developmental tasks over a lifetime. If given a substantial psychoanalytic framework of child and adult development data, a jury will accept that treatment had best go on at various points in a lifetime. Recommendation of long-term and high quantity of treatment, in a psychoanalytically oriented testimony, can be used by the child's attorney and appreciated by a judge and jury as scientifically based. The cost of major trauma-induced necessity for treatment of even one child is often substantial, as shown by life care plans in *John Doe vs. Victor Chaparral Treatment Facility, Does vs. Fr. Rudy Kos and the Archdiocese of Dallas*, and *Does v. OK Boys Ranch*. The financial punishment felt by negligent facilities and agencies has a standard-raising influence on current and potentially negligent parties such as churches, residential treatment centers, schools, and governments. The author has testified in over 200 cases, somewhat fewer than 100 having gone to trial. Very few cases, about ten, involved testimony at a criminal phase. However, the author's testimony in the sentencing phase of *People vs. Father Rudy Kos, Dallas, TX*, helped result in four life sentences for the defendant. In civil matters, following submission of a report or giving depositions, about half the cases in which the author testified were settled out of court. Based on growing interest in psychoanalytically based testimony we have established an efficiently functioning nonprofit center for forensic child psychiatry. Other benefits to the justice system are expected. We hope that costs for extremely detailed evaluations may diminish somewhat as a result of nonprofit activities. Other hopes are that judges, juries and the public will increasingly be educated by in-depth psychoanalytic testimony about children, and that use of court-appointed experts will increase in those children's cases requiring extensive evaluations.

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